

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HENRY CHRISTOPHER DAVIS,)	
)	
Petitioner,)	
)	1:13CV443
v.)	1:11CR364-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on April 18, 2016, was served on the parties in this action. Petitioner objected to the Recommendation (Doc. 26). Petitioner also filed a motion to amend his motion to vacate, set aside or correct sentence (Doc. 27).

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a *de novo* determination, which is in accord with the Magistrate Judge's report.

Petitioner requests that the court defer resolution of the § 2255 motion pending consideration of his motion to amend to add a claim based on Johnson v. United States, 135 S. Ct. 2551 (2015). But Petitioner's objections and motion to amend do not explain why Johnson would apply here, and it is clear that it does not. Johnson invalidated sentences based on 18 U.S.C. § 924(e) - the 15-year

mandatory minimum for an Armed Career Criminal. Petitioner was not charged with or sentenced under this provision. Consequently, there is no need for this court to defer or stay resolution of this matter to consider a non-applicable Johnson claim. Any amendment would be futile.

Petitioner also seeks a thirty day extension of time "within which to submit a formal reply to the Government's response in opposition to his remaining claims." (Doc. 26 at 2-3.) It is not entirely clear what relief Petitioner seeks, but the last pleading the Government filed in this case was a response to Petitioner's § 2255 motion in August of 2013, so Petitioner has had more than two years to reply to the Government's response but has failed to do so. Otherwise, Petitioner has not demonstrated good cause for any extension of time or stay in this matter. Petitioner's request will therefore be denied.

The court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Petitioner's motion to vacate, set aside or correct sentence (Doc. 18) is DENIED, Petitioner's Motion to Amend his Motion to Vacate, Set Aside or Correct Sentence (Doc. 27) is DENIED, and this action is DISMISSED. A judgment dismissing this action will be entered contemporaneously with this Order. Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor

a debatable procedural ruling, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

June 2, 2016